

Bureau of Indian Affairs, Interior

§ 103.46

full debt service based on periodic review by the Commissioner. Cash flow shall be deemed sufficient to pay debt service when earnings before interest and taxes, after adjustments for extraordinary items, equal or exceed industry norms.

(b) The lender shall notify the Commissioner that he has made or modified an insured loan under the provisions of a general insurance agreement within 20 days of such action and provide the Commissioner with the following information:

(1) The name and address of the borrower.

(2) Tribal affiliation of the borrower.

(3) Amount of the loan and purpose(s).

(4) The repayment schedule.

(5) The interest rate charged the borrower.

(6) The date(s) funds were advanced.

(c) After receiving notice from the lender, the Commissioner will establish the interest subsidy rate and notify the lender of the rate established. The Commissioner may establish procedures requiring lenders to provide reports which will expedite the prompt payment of interest subsidies. Interest subsidies will be paid on the unpaid principal balance owed by a borrower either annually, semiannually, quarterly or monthly, depending on the time interest is scheduled to be paid and as near the due date as feasible, but not before. Lenders shall notify the Commissioner promptly when borrowers pay interest or principal in advance of the due date(s) provided in the loan agreement. The interest subsidy rate established by the Commissioner will be in effect for three years. At the end of the third year the need for subsidy will be reviewed and extended on an annual basis for the next two years, if justified.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46474, Oct. 8, 1992]

§ 103.43 Premium charges.

A premium of 2.0 percent of the guaranteed portion of a loan will be charged to lenders. The lender may increase the principal amount of the loan by the cost of the premium and charge it to the borrower. The lender shall pay the

premium within 90 days of the date of approval of the loan guaranty. Existing lenders may elect to modify their Loan Guaranty and Insurance Agreements with the Bureau of Indian Affairs so as to pay future premium payments in a lump sum. If the guaranty premium is not paid within 90 days of approval of the loan guaranty or modification of the agreement, the Commissioner will send the lender a notice of non-payment. If the premium is not paid within 30 days of the receipt of this notice, the guaranty shall be subject to termination.

[57 FR 46474, Oct. 8, 1992]

§ 103.44 Other charges.

Funds may be included in loans for payment of reasonable and customary costs for legal or architectural services, appraisals, surveys, compliance inspections, title searches, lien searches, recordation costs, hazard and liability insurance premiums, taxes and such other charges as the Commissioner may authorize at the time a loan is made. Loan service charges, if any, may be charged if authorized in the loan agreement. Funds included in a loan for payment of loan service charges may not bear interest pursuant to § 103.41. Payment by the borrower of points, finders fees, loan origination fees, bonuses or commissions for loans guaranteed under this part is prohibited.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46474, Oct. 8, 1992]

§ 103.45 Late charge.

Lenders may assess borrowers a late charge on any loan installment, principal only, received more than 30 days after its due date if the loan agreement at the time of approval contains an authorization to this effect. The rate shall be specified in the loan agreement. The amount of late charges assessed may not be guaranteed or insured. Interest may not be charged on late charges.

§ 103.46 Loan servicing.

(a) The guaranty or insurance of a loan by the Commissioner and the issuance of an insurance agreement

§ 103.47

will be based on the requirement that adequate loan servicing will be performed by the lender. Loan servicing will be without cost to the borrower, unless the Commissioner authorizes a charge at the time the loan is made pursuant to § 103.44. Authorizations for such charges shall be in writing and included in the loan agreement. Lenders are expected to follow accepted standards employed by prudent lenders in the area in servicing similar type loans. In servicing loans, lenders will make every effort to prevent and minimize potential losses. Lenders will use prudence in disbursing loan funds to borrowers to assure, to the extent feasible, that loan funds are used only for the purposes for which the loan is made. Unless approved by the Commissioner, any amounts disbursed for purposes other than those provided in the loan agreement shall be excluded in the computing the amount for which the lender may be reimbursed in the event of a loss on a loan.

(b) Loan servicing must meet the following standards regarding billing and documentation. Payments must be routinely invoiced, in most cases on a monthly basis. Invoices shall include the date the payment is due and the date the payment will be considered late (i.e., grace period). Borrowers should be encouraged to use pre-authorized debits or credit cards when making payments. Loan files must contain current information on payment history, including delinquencies and defaults, and any subsequent loan action concerning deferrals, refinancing, or rescheduling. There should be a record of the time and outcome of each contact with the borrower, including notification of delinquent status, requests for repayment, and intent to report the delinquent debt to credit bureaus or to refer debts to collection agencies.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46474, Oct. 8, 1992]

§ 103.47 Restrictions on lenders.

Loan agreements shall not provide that the lender shall have the right to declare the indebtedness due, or to pursue one or more legal remedies, if the lender "shall feel insecure". This re-

25 CFR Ch. I (4-1-00 edition)

striction shall not prevent a lender from taking action against a borrower due to any act or omission on the part of the borrower which, by the terms of a note, mortgage, or other loan document, would allow the lender to declare a loan in default, nor to take action to minimize the loss on a loan.

§ 103.48 Title to property purchased with loans.

Title to personal property purchased with a guaranteed or insured loan shall be taken in the name of the borrower without a restriction against alienation. Title to land purchased with a guaranteed or insured loan may be taken pursuant to § 103.3. Transactions involving taking title to land purchases in trust or restricted status require approval of the Commissioner.

§ 103.49 Fraud or misrepresentation.

(a) Lenders shall use prudence in checking and verifying information contained in loan applications as well as supporting papers and documents in order to assure their accuracy and the validity of signatures.

(b) There shall be no liability on the part of the United States to reimburse an insured lender for that portion of an insured loss on a loan caused by:

(1) The lender's negligence in checking and verifying signatures, information in the loan application, supporting papers and documents;

(2) The lender's furnishing false information to induce the issuance of an insurance agreement by the Commissioner;

(3) The lender's furnishing false information in a loan docket on a loan made under the provisions of a general insurance agreement issued by the Commissioner; or

(4) The lender's willful or negligent action which resulted in a fraud, forgery or misrepresentation.

(c) There shall be no liability on the part of the United States to reimburse a lender on a guaranteed loan for that amount of the guaranteed loss caused by:

(1) The lender's negligence in checking and verifying signatures, information in the loan application, supporting papers and documents;